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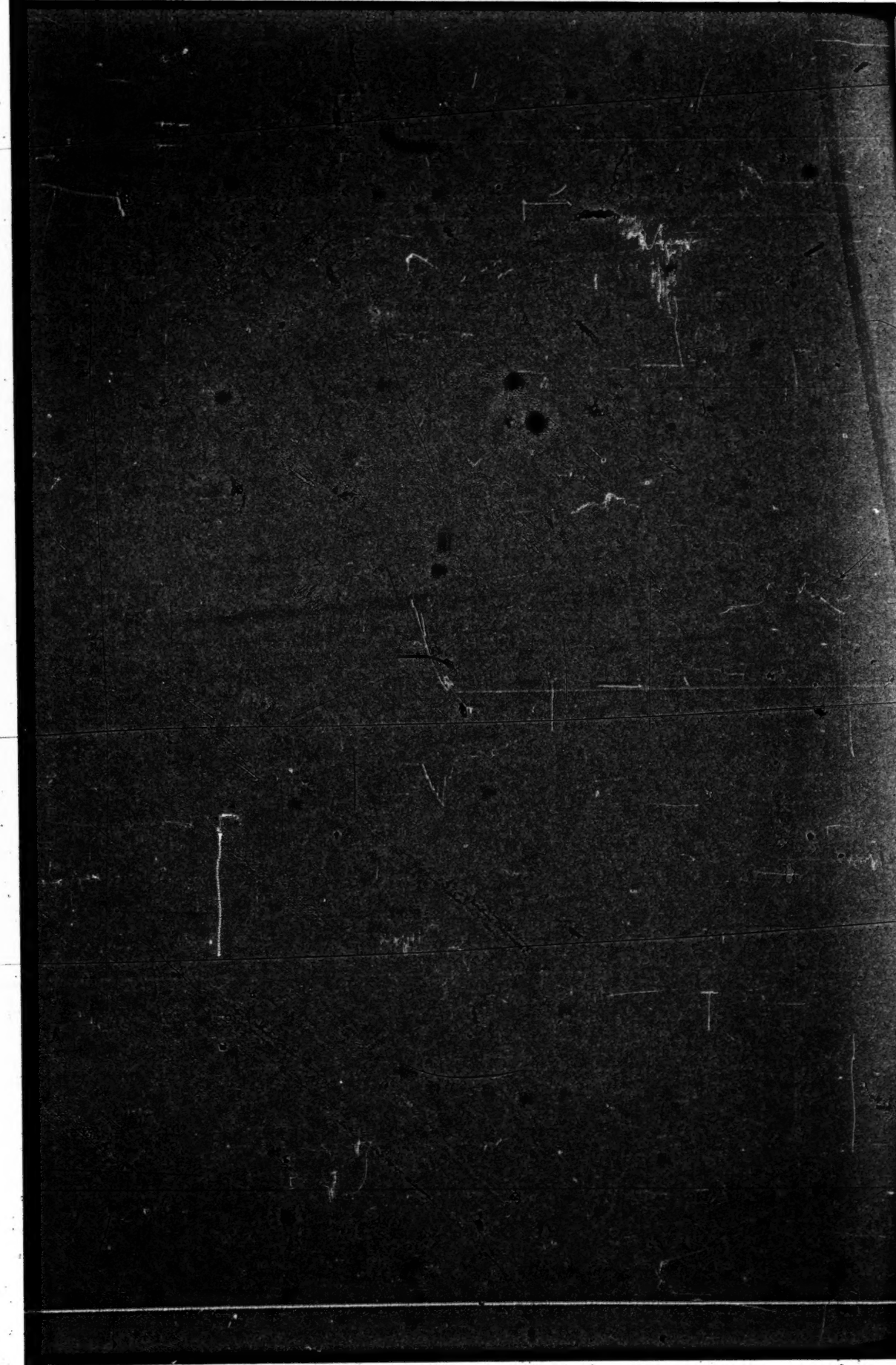

IN THE

Supreme Court of the United States

October Term, 1970

No. 1159

SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, as Liquidator of MANHATTAN CASUALTY COMPANY,
Petitioner,

against

BANKERS LIFE AND CASUALTY COMPANY, IRVING TRUST COMPANY, BELGIAN AMERICAN BANKING CORPORATION, BELGIAN AMERICAN BANK & TRUST COMPANY, GARVIN, BANTEL & COMPANY, GEORGE K. GARVIN,
Respondents.

RESPONDENTS' REPLY TO THE BRIEF FILED FOR THE SECURITIES AND EXCHANGE COMMISSION

The patently unique facts in this case, ignored by the Commission, deprive it of any claimed precedential value. Not a single known case and certainly not a single case cited by the Commission presents facts, such as are present here, of a sole stockholder who is alleged to have misappropriated the proceeds of the sale of his own corporation's securities for his own use. Thus, the Commission mistakenly asserts that the purported question it presents and discusses "is important and recurrent."

The Commission, although appearing to agree with the courts below that no federal claim can be stated with respect to the purchase of Manhattan's outstanding capital stock or the purchase of various certificates of deposit, by its sole purported "Question Presented" would have this Court believe that, in respect of the sale of its government bonds, this case involves an "agent's fraudulent inducement" of a

"security holder" to sell securities as if the "agent" were a broker and the "security holder" his customer. The Commission is wholly mistaken as to what this case involves. Here, the so-called "agent" was the sole stockholder of the "security holder" and engineered his own self-inflicted fraud. Such a factual situation is wholly unique and unlikely to recur.

The Commission's brief unjustly criticizes the opinion of the Court of Appeals. In no respect did that court impugn the integrity or scope of the remedies made available by the 1934 Act. In no respect did that court establish a rule of law which poses a threat—to say nothing of a "serious threat"—to the anti-fraud provisions.

The Commission's belated effort to construct an "important question" involving the securities laws must fail because the tendered question is not presented under the circumstances of this case.

The Petition should be denied and petitioner should be left to pursue his long-pending case in the state court.

Respectfully submitted,

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March 15, 1971